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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 GENE CAMARATA,

11 Plaintiff,

12 v.

13 MCDONALD'S CORPORATION,

14 Defendant.

CASE NO. C19-6236JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are two motions: (1) *pro se* Plaintiff and Counter Defendant  
17 Gene Camarata's motion to amend the judgment and seek miscellaneous other relief (Pl.  
18 MTAJ (Dkt. # 52)); and (2) Defendant and Counter Claimant McDonald's Corporation's  
19 ("McDonald's") motion to amend the judgment (Def. MTAJ (Dkt. # 50)). Mr. Camarata  
20 also filed a surreply seeking to strike aspects of McDonald's reply. (Surreply (Dkt.  
21 # 56).) The court has reviewed the motions, the submissions filed in support of and in  
22 opposition to the motions, the relevant portions of the record, and the applicable law.

1 Being fully advised,<sup>1</sup> the court DENIES Mr. Camarata’s motion and GRANTS in part  
2 and DENIES in part McDonald’s motion.

## 3 II. BACKGROUND

4 Mr. Camarata filed suit in state court under the Anticybersquatting Consumer  
5 Protection Act (“ACPA”), 15 U.S.C. § 1125(d), to effectively appeal decisions favoring  
6 McDonald’s in its Uniform Domain Name Dispute Resolution Policy (“UDRP”) and  
7 CentralNIC Domain Name Resolution Policy (“CDRP”) proceedings. (*See* Compl. (Dkt.  
8 # 1-2) ¶ 16.) McDonald’s removed this case to federal court on December 24, 2019.  
9 (Not. of Removal (Dkt. # 1).) Mr. Camarata, represented by counsel at the time, moved  
10 to remand the case to state court. (Mot. to Remand (Dkt. # 15).) The court denied Mr.  
11 Camarata’s motion to remand on March 2, 2020. (3/2/20 Order (Dkt. # 27).) Mr.  
12 Camarata moved to reconsider this order on March 16, 2020 (MFR (Dkt. # 28)), and the  
13 court denied that motion on March 26, 2020 (3/26/20 Order (Dkt. # 30)).

14 McDonald’s counterclaimed that Mr. Camarata violated the ACPA and sought  
15 immediate implementation of the ordered transfers of the four disputed domain names:  
16 “mcd.us.com,” “partnersmcd.com,” “storesmcd.com,” and “usstoresmcd.com.” (Ans.  
17 (Dkt. # 2) ¶¶ 30-44.) Mr. Camarata’s attorney then moved to withdraw, which the court  
18 granted on May 27, 2020; Mr. Camarata has proceeded *pro se* since then. (*See* Mot. to  
19 Withdraw (Dkt. # 34); 5/27/20 Order (Dkt. # 35).)

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21 <sup>1</sup> Neither party requests oral argument (*see* Def. MTAJ at 1; Pl. MTAJ at 1; Def. MTAJ  
22 Resp. at 1), and the court finds that oral argument would not be helpful to its disposition of the  
motions, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 McDonald's filed a motion for summary judgment on February 11, 2021. (MSJ  
2 (Dkt. # 41).) Mr. Camarata moved for an extension of time to respond on March 1, 2021.  
3 (Mot. for Extension (Dkt. # 44).) The court granted him an extension until March 12,  
4 2021, to oppose McDonald's motion. (3/2/21 Order (Dkt. # 45) at 2.) Despite the  
5 extension, Mr. Camarata did not file a response. (*See* Dkt.) The court granted  
6 McDonald's summary judgment motion on March 23, 2021, (3/23/21 Order (Dkt. # 48)  
7 at 2), and entered judgment the same day (Judgment (Dkt. # 49)). In its order, the court  
8 found that McDonald's prevailed on its ACPA counterclaim, which necessarily defeated  
9 Mr. Camarata's claim for a declaration of non-infringement. (3/23/21 Order at 9.)

### 10 **III. ANALYSIS**

11 There are two motions pending that seek distinct forms of relief. Thus, the court  
12 addresses Mr. Camarata's motion before turning to McDonald's motion.

#### 13 **A. Mr. Camarata's Motion**

14 Mr. Camarata styles his motion as one to amend the judgment but additionally  
15 seeks other forms of relief, including that the case be remanded back to state court and  
16 that he should have received more time to respond to McDonald's motion for summary  
17 judgment. (Pl. MTAJ at 1-2.) The court will liberally construe Mr. Camarata's filing as  
18 a motion to amend the judgment and as motions to reconsider its previous orders on  
19 remand and the extension for his response. *See Blaisdell v. Frappiea*, 729 F.3d 1237,  
20 1241 (9th Cir. 2013) ("Courts in this circuit have an obligation to give a liberal  
21 construction to the filings of pro se litigants.").

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1 A district court has considerable discretion when considering a motion to alter or  
2 amend a judgment under Rule 59(e). *Turner v. Burlington N. Santa Fe R.R. Co.*, 338  
3 F.3d 1058, 1063 (9th Cir. 2003). “Although Rule 59(e) permits a district court to  
4 reconsider and amend a previous order, the rule offers an extraordinary remedy, to be  
5 used sparingly in the interests of finality and conservation of judicial resources.” *Kona*  
6 *Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citations and  
7 quotation marks omitted). Rule 59(e) “may not be used to relitigate old matters, or to  
8 raise arguments or present evidence that could have been raised prior to the entry of  
9 judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (internal  
10 quotation marks and citation omitted). There are four grounds upon which a Rule 59(e)  
11 motion may be granted: (1) to correct manifest errors of law or fact upon which the  
12 judgment is based; (2) on the basis of newly discovered or previously unavailable  
13 evidence; (3) to prevent manifest injustice; or (4) on the basis of an intervening change in  
14 controlling law. *Turner*, 338 F.3d at 1063. Demonstrating one of these reasons for is a  
15 “high hurdle.” *Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001). A court  
16 considering a Rule 59(e) motion is not limited to these four situations, however, and an  
17 amendment may “reflect[] the purely clerical task of incorporating undisputed facts into  
18 the judgment.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

19 Mr. Camarata has not met the standard articulated above. He has not raised newly  
20 discovered or previously unavailable evidence, manifest injustice, or any intervening  
21 change in the controlling law. *See Turner*, 338 F.3d at 1063. Instead, he points out one  
22 error: He had registered an additional domain name in March 2020, not March 8, 2021.

1 (Pl. MTAJ at 2 (quoting 3/23/21 Order at 8).) But the judgment was not based on that  
2 one fact; in fact, that additional domain name was not even one of the four domain names  
3 at issue. (*See* 3/23/21 Order at 8-15.) Thus, Mr. Camarata has not cleared the “high  
4 hurdle” for a motion to amend a judgment. *See Weeks*, 246 F.3d at 1236.

5 Additionally, Mr. Camarata’s motions to reconsider are both untimely and  
6 unavailing. “Motions for reconsideration are disfavored.” *See* Local Rules W.D. Wash.  
7 LCR 7(h)(1). A motion for reconsideration “shall be filed within fourteen days after the  
8 order to which it relates is filed.” *Id.* LCR 7(h)(2). Ordinarily, the court will deny such  
9 motions in the absence of a showing of (1) “manifest error in the prior ruling,” or (2)  
10 “new facts or legal authority which could not have been brought to [the court’s] attention  
11 earlier with reasonable diligence.” *Id.* LCR 7(h)(1). The court denied Mr. Camarata’s  
12 motion to remand more than a year ago on March 20, 2020, and the court granted his  
13 extension more than two months ago on March 2, 2021. (*See* 3/20/20 Order; 3/2/21  
14 Order.) Indeed, he had already moved for reconsideration of the denial of remand—and  
15 the court denied that motion, again, over a year ago. (*See* 3/26/20 Order.) Moreover, Mr.  
16 Camarata does not point to any new facts, legal authority, or manifest error in the prior  
17 rulings; instead, he reiterates arguments his former attorney had already made. (*See* Pl.  
18 MTAJ at 2.) Thus, the court denies Mr. Camarata’s motions to reconsider.<sup>2</sup>

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21 <sup>2</sup> To the extent that Mr. Camarata’s motion to amend the judgment is a motion for  
22 reconsideration of the court’s summary judgment order, the court also denies it as untimely. (*See*  
3/23/21 Order; Pl. MTAJ); Local Rules W.D. Wash. LCR 7(h)(2).

1 **B. McDonald's Motion**

2 At the outset, Mr. Camarata moves to strike portions of McDonald's reply that  
3 "misleadingly present[]" case law and a footnote that "makes particularly nasty,  
4 unprofessional and legally baseless arguments about possible attorney 'ghost-writing' for  
5 a pro-se litigant." (Surreply at 1-2 (citing Reply (Dkt. # 55) at 5 n.2).) "New arguments  
6 may not be introduced in a reply brief," *United States v. Puerta*, 982 F.2d 1297, 1300 n.1  
7 (9th Cir. 1992), and a court "need not consider arguments raised for the first time in a  
8 reply brief," *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). If new facts or  
9 arguments are introduced in a reply, the nonmoving party may file a surreply requesting  
10 that the court strike the material. Local Rules W.D. Wash. LCR 7(g). McDonald's raises  
11 the issue of "ghost-writing" for the first time in a footnote in its reply, and thus, the court  
12 strikes this footnote and will not consider it for the purposes of this motion. However,  
13 the court will not strike McDonald's representation of certain case law, as the court may  
14 evaluate the persuasiveness of McDonald's reliance on authority.

15 Having determined what is properly before it, the court now addresses the merits  
16 of McDonald's motion. McDonald's asks to amend the judgment in four ways: (1) to  
17 require that Mr. Camarata transfer the four disputed domain names to McDonald's; (2) to  
18 require that Mr. Camarata transfer additional domain names that include "mcd" or  
19 "mcdonalds" to McDonald's; (3) to direct Mr. Camarata to return and delete all  
20 misdirected emails; and (4) to admonish Mr. Camarata from registering any new McD  
21 domain names. (Def. MTAJ at 8.)

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1 As discussed above, amending a judgment is “an extraordinary remedy which  
2 should be used sparingly,” usually for the four aforementioned reasons or where the  
3 amendment “reflects the purely clerical task of incorporating undisputed facts into the  
4 judgment.” *Herron*, 634 F.3d at 1111; *see supra* § III.A. Here, the court previously  
5 found no dispute as to “McDonald’s ownership of the distinctive and valid McD mark,  
6 the confusingly similar nature of the [four domain names] to the McD mark, and Mr.  
7 Camarata’s bad faith intent to profit from the McD mark.” (3/23/21 Order at 15.) In  
8 other words, the court found that McDonald’s had satisfied “the rigorous elements of  
9 cyber-squatting under the ACPA” as to those four domain names, and the ACPA  
10 specifically authorizes the remedy of turning over the domain names at issue. *Interstellar*  
11 *Starship Servs., Ltd. v. Epix, Inc.*, 304 F.3d 936, 948 (9th Cir. 2002). Thus, the court,  
12 under its “discretion to fashion appropriate relief,” will require Mr. Camarata to transfer  
13 the four disputed domain names “mcd.us.com,” “partnersmcd.com,” “storesmcd.com,”  
14 and “usstoresmcd.com” to McDonalds and admonish him from registering any new McD  
15 domain names. *See id.*

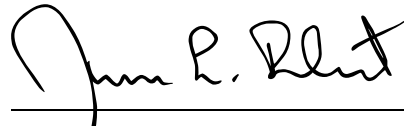
16 However, the court declines to order Mr. Camarata to turn over any other domain  
17 name or the misdirected emails that he has received. None of the other domain names  
18 were at issue in this suit (*see* Compl.; Ans.), so the court has had no occasion to make any  
19 findings under the ACPA regarding these additional domain names (*see* 3/23/21 Order  
20 (analyzing elements of ACPA for four disputed domain names)). Furthermore, there is  
21 no indication McDonald’s has undergone the UDRP or CDRP processes for these  
22 additional domain names. Nor has McDonald’s provided any authority that supports

1 injunctive relief as sweeping as ordering Mr. Camarata to return or delete misdirected  
2 emails. (*See* Def. MTAJ; Reply.) The court is unpersuaded that such a broad injunction  
3 would be sufficiently “narrowly tailored.” *See Lahoti v. Verichack, Inc.*, 708 F. Supp. 2d  
4 1150, 1169 (W.D. Wash. 2010).

#### 5 **IV. CONCLUSION**

6 For the foregoing reasons, the court DENIES Mr. Camarata’s motion to amend the  
7 judgment (Dkt. # 52) and GRANTS in part and DENIES in part McDonald’s motion to  
8 amend the judgment (Dkt. # 50). The court ORDERS Mr. Camarata to transfer the four  
9 domain names “mcd.us.com,” “partnersmcd.com,” “storesmcd.com,” and  
10 “usstoresmcd.com” to McDonald’s within ten (10) days. The court further admonishes  
11 Mr. Camarata from registering any new McD domain names.

12 Dated this 11th day of May, 2021.

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15 JAMES L. ROBART  
16 United States District Judge  
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